MAR 7 1967

In the

United States Court of Appeals

For the Ninth Circuit

No. 21310

CALIFORNIA GAS PRODUCERS ASSOCIATION
INDEPENDENT OIL AND GAS PRODUCERS
OF CALIFORNIA
JADE OIL AND GAS COMPANY
Petitioners.

v.

FEDERAL POWER COMMISSION
Respondent.

On Petition to Review an Order of the Federal Power Commission

Reply Brief on Behalf of California Gas Producers Association, Independent Oil and Gas Producers of California, Jade Oil and Gas Company

FILED

MAR 6 1967

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February 20, 1967

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QUESTIONS PRESENTED

As stated in their Initial Brief this case involves an appeal filed by the California Gas Producers Association, the Independent Oil and Gas Producers of California, and the Jade Oil and Gas Company ("California producers") for review of the orders issued by the Federal Power Commission ("FPC, Commission") authorizing a subsidiary of Pacific Gas & Electric Company ("PG&E")

to import a large volume of Canadian gas into northern California starting November 1966. (*Re Pacific Gas Transmission Company,* Docket No's. CP65-213, 214, 215).

The questions presented are:

1. In authorizing PG&E to import large volumes of Canadian gas into northern California starting in 1966 and 1967, can both PG&E and the FPC ignore completely the possibility of any new discoveries of natural gas in northern California after December 31, 1965 in determining whether a "market" exists in northern California for the newly authorized supplies of imported Canadian gas?
2. In authorizing PG&E to import large volumes of Canadian gas into northern California can the FPC refuse to receive and consider evidence showing the existence and availability of alternative supplies of natural gas from west Texas and New Mexico which could be delivered to the California border at a lower cost?

Throughout *this* proceeding before the FPC's Presiding Examiner, and before the FPC itself, and in the course of this appeal, the FPC and PG&E answered these two questions by saying "yes": All new discoveries of California produced gas may be ignored, and evidence of lower cost availability of alternative supplies of natural gas may be excluded and ignored — in determining whether to certificate new deliveries of out-of-state, or Canadian gas into California.

In every other recent case before the FPC itself, and the Courts, however, these questions have been answered "no". Thus, the FPC itself recognizes that new discoveries of locally produced (California) gas may *not* be ignored, and evidence of lower cost availability of alternative supplies of natural gas may *not* be excluded and ignored — in determining whether to certificate new

deliveries of out-of-state, or Canadian, gas into a new or expanding market.

This point-of-view has been repeatedly demonstrated by FPC and Court decisions in the *Transwestern* (*Gulf Pacific*), *Rock Springs, Westcoast Transmission,* and *Great Lakes Transmission* cases, decided or under submission by the FPC during the last few years. It is supported by Court decisions in the *City of Pittsburgh* and *Consolidated Edison* cases. No case is cited to the contrary, saying that new discoveries of gas locally-produced gas can be ignored, or that evidence as to alternative means of delivering equivalent supplies at lower cost can be excluded.

In other words, the principles and policies upon which the FPC determines the "public convenience and necessity" apply to all of the FPC's *other* cases, but — for some reason or other — the FPC, PG&E, and the other parties supporting the FPC, argue that these principles and policies do not apply to this case.

I IN AUTHORIZING PG&E TO IMPORT LARGE VOLUMES OF CANADIAN GAS INTO NORTHERN CALIFORNIA STARTING IN 1966 AND 1967, CAN BOTH PG&E AND THE FPC IGNORE COMPLETELY THE POSSIBILITY OF ANY NEW DISCOVERIES OF NATURAL GAS IN NORTHERN CALIFORNIA AFTER DECEMBER 31, 1965, IN DETERMINING WHETHER A "MARKET" EXISTS IN NORTHERN CALIFORNIA FOR THE NEWLY AUTHORIZED SUPPLIES OF IMPORTED CANADIAN GAS?

In no place in the Answering Briefs filed on behalf of the FPC, PG&E, the Pacific Lighting Companies, the Oregon Public Utilities Commissioner, or the City and County of San Francisco is there any direct answer to this question presented by the California gas producers.

(a) Reply to Federal Power Commission

The FPC reviews the evidence submitted by PG&E asserting that the California producers "totally ignore" the fact that the record shows that even with the purchases certificated here, P G&E's requirements are such that it could absorb "much larger" gas supplies from California than it estimated would be available. Even if PG&E could purchase the same quantities of California gas in 1967, as it did in 1964, the FPC says that PG&E's total supply would *only* be increased by 103,000 Mcf, so that the total supply would still, on an average daily basis, be 138,000 Mcf less than the anticipated market potential. Under these circumstances, the FPC concludes that it had "no occasion" to address itself to the attack on PG&E'S method for predictating available California gas supply. The California producers challenge of that method is thus dismissed by the FPC as "irrelevant" and "will not be discussed" (FPC Brief, pp. 29-30).

In reply, the California producers note that according to the FPC the amount of natural gas imports at issue is "only" 103,000 Mcf per day. If PG&E's estimated purchases of northern California dry gas were increased by 100,000 Mcf per day (even less than the 103,000 Mcf per day which the FPC suggests), this would be not only enough to provide for the maintenance of P G&E's purchases at the 1964 level (633,000 Mcf per day), but would be sufficient to defer for 1 year — from November 1, 1966 to November 1, 1967, PG&E's initial additional importation of 100,000 Mcf per day of Canadian gas. While the California producers challenge of PG&E's forecast methods may be "irrelevant" and unworthy of discussion by the FPC, it is a matter of vital and continuing importance to the California producers so that a continuing market for the present level of California gas production is to be assured.

In view of the FPC's specific approval of the use of trend estimates of future California gas production in the recent south-

ern California *Gulf Pacific* case, it is clear that the FPC does not condemn the use of such estimates in the present PG&E case (California Producers Brief, pp. 14-15). In its Brief to the Court here, the FPC merely apologizes for their omission in this proceeding, asserting that they are "irrelevant".

The California producers believe that such future gas supply estimates are "irrelevant" only if both PG&E and the FPC are justified in totally ignoring the possibility of any future new northern California gas discoveries and developments in scheduling the volume and timing of any additional imports of Canadian gas.

(b) Reply to Pacific Gas and Electric Company

Second, Pacific Gas and Electric Company says that if "no further California gas were discovered or developed, then the life index of existing reserves would drop to slightly less than seven years by the end of 1970. The discovery and development of this yet unknown reserve, PG&E asserts "cannot be relied upon", asserting that the history of discoveries in California is "sporadic". Nevertheless, PG&E asserts that the evidence shows that if reserves adequate to support the 1965 level of production should be discovered and offered for sale by the producers, PG&E "could" market the production, since PG&E would have a demand for gas "far in excess" of that which could be met by the additional 200,000 Mcf per day to be imported from Canada in this proceeding (P G&E Brief, pp. 29-30).

Significantly, while PG&E says that it "could" market such additional California gas production it refuses to estimate that there will be any new discoveries or developments of northern California gas supplies which should be considered in scheduling the volume and timing of its additional imports of Canadian gas.

In making these assertions, PG&E does not deny that its entire testimony as to the availability as to the future supplies of northern California proposed gas did not take into account any future projected, unconnected wells after December 31, 1965. If the present

level of California gas production were used, PG&E's proposed imports of Canadian gas, starting November 1, 1966 could be deferred for 1 year, to start November 1, 1967. What PG&E does say is that perhaps its estimate of future purchases of northern California produced gas (based on the unrealistic unassumption that there will be no future new discoveries or developments of California produced gas after 1965) is in error, but that the error is such that even if it were made, PG&E would still have a sufficient market to purchase supplies of northern California produced gas far in excess of its estimates.

The short answer to this is if PG&E believes on a realistic basis that there will be *any* new discoveries or developments of northern California dry gas after the end of December 31, 1965, it is incumbent upon PG&E to present that evidence to the FPC and to the parties in this proceeding so that a "realistic" rather than an "unrealistic" basis may be presented for determining the required volume and timing of any additional imports of Canadian gas. Certainly, if PG&E can present such estimates in other proceedings (in the Permian Basin Area Rate case, or before the Alberta Oil and Gas Conservation Board), it can do so here.

(c) Reply to Pacific Lighting Companies

Third, the Pacific Lighting Companies wisely refrain from *any comment at all* on this question since the sworn testimony of their gas supply witness, and the FPC's final opinion, in the *Gulf Pacific* proceedings, indicates clearly that in estimating the available supply of California produced gas in southern California the "total supply" available in 1965 was trended to obtain the estimated volumes for subsequent years in order *"to reflect both normal decline in production an the addition of new sources of gas"* (*Re Transwestern Pipeline Company,* et. al., Opinion No. 500, p. 22) (California Producers Brief, p. 12).

The difference between PG&E and the Pacific Lighting Companies is that while Pacific Lighting Companies estimate *no reduction at all* in their California produced gas supply in *southern* California from 1965 to 1970, PG&E forecasts a reduction from 628,000 Mcf per day in 1964 to 328,200 Mcf per day in 1970 in *northern* California — a reduction of nearly 50%. The difference is that while Pacific Lighting's estimates of future purchases of California produced gas purchase levels have been very close to these forecasts, PG&E's estimates have been completely unreliable — amounting to less than 40% of the California produced gas which actually became available (California Producers Brief p. 18).

(d) Reply to City and County of San Francisco

Fourth, the City and County of San Francisco applaud PG &E's estimated cut-backs in its future purchases of northern California gas, saying that evidence was presented to show that in the interests of consumers of northern California "it is necessary to preserve the gas fields as long as possible in order to meet future peak periods", asserting that the California producers have not established they are "ready, willing and able" to undertake on any firm contract basis to supply the needs of PG&E in the future. San Francisco goes on to argue at great length that the price which the California producers are receiving for their gas from PG&E is up to 11¢ per Mcf higher than the cost of Canadian gas (San Francisco Brief, pp. 4-8).

Contrary to San Francisco's statement, no evidence of any kind was presented (and San Francisco makes no record reference) to indicate any necessity to preserve the northern California gas fields "as long as possible" in order to meet future peak periods. The California gas producers have indicated that they are "ready, willing, and able" to contract to deliver a supply of California gas at the present level for at least three years in the future, particularly if PG&E were willing to offer them any such contract

(Fazio, R. 1363; California Producers Brief on Exceptions, pp. 34-40; R. 5063-5069). In addition, the California producers pointed out at length in their Briefs, both before the Presiding Examiner and the FPC itself, that taking into account the cost and value of the required peaking characteristics imposed upon deliveries of California dry gas (not imposed upon deliveries of Canadian gas) the cost of California produced gas was actually less — rather than up to 11¢ more — than the cost of Canadian gas (California Producers Brief on Exceptions, pp. 31-34; R. 5060-5063).[1]

In sum, the comments of the City and County of San Francisco do not meet the issue posed by the California producers in this appeal:

> In authorizing PG&E to import large volumes of Canadian gas into northern California starting in 1966 and 1967, can both PG&E and the FPC ignore completely the possibility of any new discoveries of natural gas in northern California after December 31, 1965, in determining whether a "market" exists in northern California for the newly authorized supplies of imported Canadian gas?

(e) Position of the California Gas Producers

Ever since the arrival of the first deliveries of PG&E's new supplies of Canadian gas in December 1961, the California gas

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1 As the City and County of San Francisco knows, there is no basis for stating that PG&E's supplies of northern California gas are more expensive than additional supplies of Canadian gas. Compared to the practically continuous (90%-100% load factor) deliveries of Canadian gas, PG&E's purchases of northern California gas are made at less than a 50% load factor, requiring 3 to 1, 4 to 1, and up to 5 to 1 peak day — compared to average — deliveries. Since these "peaking characteristics" are, themselves, valued at 11.65¢ - 12.10¢ per Mcf (based on the alternative cost of making such deliveries from PG&E's underground storage fields) the incremental cost of the additional Canadian gas supplies, and the cost of California produced gas purchases are about the same (California Producers Brief on Exceptions, pp. 31 - 34; R. 5060 - 5063). While this issue was discussed by the Presiding Examiner in his initial Decision (p. 20; R. 4921) it was never raised nor referred to by the FPC in its final decision (R. 5254 - 5263). San Francisco's statements in this respect are therefore deliberately misleading.

producers have had a difficult time in marketing their gas supplies to PG&E, the monopoly purchaser of gas in northern California.

In 1961 PG&E purchased 75,000 Mcf per day over the minimum contract purchase volumes stated in PG&E's gas purchase contracts. After the advent of PG&E's first new deliveries of Canadian gas in December 1961, no further purchases over the minimum contract requirements have been made — a loss of over $8 million, or nearly 15% in sales. In contrast to PG&E's interest and willingness to promptly negotiate purchases of new California gas supplies, together with a willingness to attach these new contracted-for supplies to its system in 1961 and prior years, during 1962-1964, and now 1965 and 1966, PG&E has been notably slow in contracting for, and then attaching, new supplies of northern California dry gas to its existing system.

Today, the northern California dry gas producer is faced with what is undoubtedly the most restrictive gas purchase contract in the United States — calling for deliveries of up to 5 times (500%) as much gas for peak-day use as PG&E agrees to purchase on the average, a contract term sharply more restrictive and demanding than the 10%-20% peaking provision found in PG&E's Canadian contracts, and many times the typical 30% peaking provision found in gas purchase contracts in west Texas and New Mexico. In addition to this he is faced with selling his production, if at all, to a monopoly buyer who admittedly purchases over 95% of the natural gas produced in northern California.

Added to this, the northern California gas producer receives less in the way of line extension allowonces to attach his gas to PG&E's system than is available elsewhere — in southern California. Furthermore, in the absence of take-or-pay-for clauses (which PG&E has to date generally refused to insert in its gas purchase contracts) the loss attributable to PG&E's delays have fallen squarely on the northern California gas producer.

While there may have been some justification for these difficulties in marketing supplies of northern California produced gas when the first deliveries of PG&E's Canadian gas were made (a certain minimum volume being required in order to commence pipeline operations) no such justification exists for increasing the capacity of the Canadian pipeline, and importing additional supplies of Canadian gas based solely on unrealistic PG&E estimates which completely disregard and ignore any possible new discoveries or developments of northern California gas production.

As long as PG&E continues to estimate sharp declines in its future purchases of California produced gas — employing a completely "unrealistic" assumption of no further northern California discoveries or developments — these difficulties in marketing supplies of California produced gas will also continue. Only if PG&E is required to make a "realistic" forecast of northern California dry gas production (as the FPC has approved for southern California) will the northern California gas producer have any official indication that *any* market exists for any new discoveries and development of new northern California dry gas fields.

As the California producers have shown (Brief, p. 6) and as the FPC has admitted (FPC Brief, p. 10) the adoption of the current continued level for PG&E's prospective purchases of California produced gas in 1967 would increase the indicated supply by over 103,000 Mcf per day — with an even greater amount for later years. Such an additional amount would be more than enough to warrant deferment of PG&E's purchases of additional supplies of Canadian gas from November 1, 1966 to November 1, 1967, or later. The error is, therefore, one of substantial magnitude.

On this basis alone, the California gas producers ask that the FPC decision in these proceedings be set aside and new hearings ordered in the light of the FPC's failure to consider PG&E's unsupported estimated "cut-backs" of California produced gas in order to provide a market for additional deliveries of Cana-

dian gas. Certainly, no estimates based on the wholly unrealistic assumption that there will be *no new discoveries or development of dry gas in northern California after December 31, 1965* can be used as a basis for FPC certification and approval of additional Canadian imports under the "public interest" standards of the Natural Gas Act.

II IN AUTHORIZING PG&E TO IMPORT LARGE VOLUMES OF CANADIAN GAS INTO NORTHERN CALIFORNIA CAN THE FPC REFUSE TO RECEIVE AND CONSIDER EVIDENCE SHOWING THE EXISTENCE AND AVAILABILITY OF ALTERNATIVE SUPPLIES OF NATURAL GAS FROM WEST TEXAS AND NEW MEXICO WHICH COULD BE DELIVERED TO THE CALIFORNIA BORDER LOWER COST?

A) The FPC, PG&E, and the Pacific Lighting Companies Are Mistaken in Believing that the FPC "Correctly" or "Properly" Concluded That Evidence of Possible Alternative Means of Delivering El Paso Gas to PG&E Should Have Been Excluded From Consideration.

Each of the parties supporting the FPC's issuance to PG&E of a certificate to import the additional supplies of Canadian gas argues, in effect, that while it is appropriate as a matter of general law to receive and consider evidence showing the existence and availability of alternative supplies of lower cost gas, it was not appropriate for the FPC to require such evidence "in this case". In order to justify the exclusion of such evidence in this case, the parties assert that:

1) The FPC "reasonably concluded" that no alternate supply was available at better prices (FPC Brief, pp. 11-21);

2) The "record does not demonstrate" that alternative methods exist for providing the needed volumes . . .

at rates and under conditions "more advantageous (PG&E Brief, pp. 19-26);

3) The FPC considered the State of Texas proposal "on the merits" but found the benefits from the PG&E applications more "in the public interest" (Pacific Lighting Brief, pp. 11-20);

4) The FPC "correctly excluded" the testimony and exhibits tending to show the existence of such alternative means and there was "no violation of due process" (San Francisco Brief, pp. 8-13).

The basis upon which each of the parties argues that the Presiding Examiner and the FPC itself was justified in excluding the proposed testimony and exhibits is, in effect, that even if the evidence had been admitted, it would not have proved what the State of Texas, TIPRO, IPAA, and the California gas producers assert that it would have proved.

Thus, the parties individually state:

1) The incremental cost to PG&E for El Paso gas under the Hunsaker testimony would be "higher" and the California producer claims of other alternatives are "totally misconceived" (FPC Brief, pp. 13-21).

2) The arguments of Texas, TIPRO, and the California gas producers as to the price at which El Paso gas was available to PG&E are "misleading" (PG&E Brief, pp. 15-19);

3) PG&E's incremental costs for the instant Pacific Gas Transmission Canadian gas supplies were substantially lower than the delivered cost of El Paso gas, and while El Paso's present available capacity is interruptible, PG&E's consumers required firm capacity (Pacific Lighting Brief, pp. 14-19);

4) No alternates have been shown, nor would be inclusion of the proffered testimony add “anything of a material nature” (San Francisco Brief, p. 11).

The question, therefore, comes down to what the proposed, or proffered evidence (testimony and exhibits) would have shown if it had been admitted as part of the record in these proceedings.

There is, in fact, no question but that the evidence sought to be introduced and made a matter of record in the proceedings before the FPC would have shown the existence and availability of alternative supplies of natural gas from west Texas and New Mexico which could be delivered to the California border at a lower cost.

First, for the purposes of a point of reference, the testimony introduced by PG&E in this proceeding showed that the delivered cost of its supply of Canadian gas at the California border would be: (Presiding Examiner’s Decision, p. 15; R. 4916):

	Average Cost Including Additional Volumes (¢ per Mcf)	Incremental Cost of The Additional Volumes (¢ per Mcf)
1967	31.04¢	—
1968	30.73¢	22.60¢
1969	30.91¢	23.36¢
1970	30.83¢	23.60¢

The question is whether the testimony and exhibits sought to be introduced by the State of Texas, TIPRO, IPAA, and the California gas producers would have shown that the delivered cost of El Paso gas to PG&E at the California border in equivalent volumes and similar conditions of proposed service would have been lower.

B) In Contrast to the Position Taken, and the "Calculations" Made by the FPC, PG&E, and the Pacific Lighting Companies, On Both an Average Cost, and in Incremental Cost Basis, the Delivered Cost of Additional Supplies of El Paso Gas under Similar Conditions of Service Would Be Lower Than the Cost of PG&E's Proposed Additional Canadian Imports

This question is easily resolved. On both an average cost, and an incremental cost basis, the delivered cost of additional supplies of equivalent El Paso gas under similar conditions of service would have been lower.

On an *average cost* basis, all of the parties submitting any delivered cost data show that the average delivered cost of El Paso gas would be lower than the average delivered cost of PG &E's Canadian gas. Thus, taking into account the probable forthcoming reductions in the cost of El Paso's gas resulting from the certification of new deliveries to southern California, the "flow-through" of lower Federal and State income tax costs resulting from liberalized depreciation, and the lower natural gas field purchase costs resulting from the FPC's recent Permian Basin Area Rate decision, the delivered cost of equivalent supplies of El Paso gas under similar conditions of proposed service would be 27.75¢-27.00¢ per Mcf.[1]

FPC - "as low as an average of 27.00¢ per Mcf (FPC Brief, p. 15, fn. 14)

PG&E - "could possibly be reduced to about 27.75¢ per Mcf (PG&E Brief, p. 18)

Pacific Lighting - "assuming . . . all . . . reduction . . . at the maximum amounts . . . 27.25¢ per Mcf (Pacific Lighting Brief, p. 16).

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[1] As a practical demonstration of this lowered delivered cost of El Paso gas, on January 26, 1967 this Court may take official notice of the fact that El Paso filed a rate reduction of 0.94¢ per Mcf (about 1¢ per Mcf) applicable to its deliveries of natural gas to PG&E, reducing the delivered price at the California border to 28.90¢ per Mcf (14.73 psia). Further delivered price reductions are expected. (*Re El Paso Natural Gas Company,* Docket No. RP67-9, Notice issued January 31, 1967, 32 FR 2589).

Since the average cost of PG&E supplies of Canadian gas at the California border is 30.73¢ - 31.04¢ per Mcf (above), it is clear that on an "average cost" basis the supplies of El Paso gas would be available at a lower cost.

The same comparison is equally true on an "incremental cost" basis.

The proposed testimony and exhibits sought to be made part of the record by the State of Texas, TIPRO, IPAA, and the California gas producers show that the additional required natural gas transmission pipeline construction by El Paso would have been $50,442,000 (Hunsaker, Ex. No. 56, Tr. 1518; R. 2932). This would have been sufficient to deliver, not 200,000 Mcf per day as sought by PG&E, but 250,000 Mcf per day — or 25% additional. No question has been raised by any party that this larger supply of gas would have been of the same "firm" character (and, in fact, of a slightly higher heat content) of the Canadian gas sought to be imported by PG&E.

The incremental cost of this gas is also a matter of record in these proceedings. In a letter sent by the President of PG&E to the President of Westcoast Transmission (a possible competing Canadian supplier) PG&E's policy witness in these proceedings (Mr. J. S. Moulton) prepared a Memorandum setting forth the "comparative Cost of Additional Out-of-State Gas" which was attached to the letter. During Mr. Moulton's cross-examination, this letter was made a matter of evidence in the FPC proceedings over the objections of PG&E's counsel and was finally admitted only as an "offer of proof" not further considered either by the Presiding Examiner, or by the FPC, itself (R. 1758-60). As set forth in Mr. Moulton's Memorandum, the incremental cost of deliveries of 250,000 Mcf per day of El Paso gas to PG&E at the California border at different load factors (L.F.) were (Moulton, Ex. No. 64; R. 3057-3061):

EL PASO ESTIMATES OF COST OF GAS DELIVERED TO THE CALIFORNIA BORDER

Incremental Costs (a)

	Project			
	250 M^2/Day		575 M^2/Day	
	L.F.	Cost/Mcf¢	L.F.	Cost/Mcf¢
1968	91.66	20.57	95.0	22.66
1969	94.74	20.69	95.0	23.01
1970	96.3	20.05	95.0	22.69
Average 14.9¢ base	94.9	20.43		22.79
Average 14.73¢ base		20.2		22.53

Note: (a) I.N.G.A. Bulletin of November 1964 digest of Travis Petty testimony in El Paso et al F.P.C. hearings October 7-9, 1964.

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Clearly these incremental costs, for an additional supply of 250,000 Mcf per day (250 M^2/Day) 20.2¢ per Mcf on the average, are nearly 2½¢ -3½¢ per Mcf less than the incremental delivered costs of 22.60¢ - 23.60¢ per Mcf for PG&E's proposed new supplies of Canadian gas. Even the higher average 1968-1970 22.53¢ per Mcf incremental costs of an additional supply of 325,000 Mcf per day (totalling 575 M^2/Day) are less than the 22.60¢ - 23.60¢ per Mcf for PG&E's proposed supplies of Canadian gas. Since, however, El Paso's delivered price is subject to a reduction of 2¢-2½¢ per Mcf (assuming a 1¢ per Mcf reduction in purchased gas resulting from the Permian Basin Area Rate case, and an additional 1¢ per Mcf to reflect recently authorized increased delivery volumes and the "flow-through" of liberalized depreciation) the final incremental cost of even the larger volume of El Paso deliveries would still be 2½¢ - 3½¢ per Mcf less than the 22.60¢ - 23.60¢ per Mcf incremental costs for PG&E's proposed new supplies of Canadian gas.

Thus, on all counts, volume and type of service, and on both an average and incremental cost basis, the evidence sought to be made a matter of record in these proceedings by the State of Texas, TIPRO, IPAA, and the California gas producers would have shown the existence and availability of alternative supplies of natural gas from west Texas and New Mexico which could be delivered to the California border at a lower cost than PG&E's proposed importation of additional supplies of Canadian gas.[1]

In contrast to this, the FPC, and Pacific Lighting arrive (after a page or two of detailed explanation) at an "incremental cost" of 25.7¢ per Mcf (FPC Brief, p. 14; Pacific Lighting Brief, pp. 1-16) — or about 4¢ per Mcf more than the incremental cost of 22.6¢ - 23.6¢ per Mcf for PG&E's Canadian gas. Needless to say none of these calculations, suggestions, or computations were ever made a matter of record during the course of the proceedings — but instead were "manufactured" out of thin air for the first time in the FPC and Pacific Lighting Answering Briefs. Even if these theories, and calculations, were correct — which they are not — the record in these proceedings should be reopened to have them presented and tested on cross-examination.

Pacific Lighting also makes a comparison, stating that the total capital cost of PG&E's proposed 200,000 Mcf per day Canadian

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1 PG&E policy witness Moulton's Memorandum showing "El Paso Estimates of Cost of Gas Delivered to the California Border" (Ex. No. 64; R. 3057-3061) refers to INGAA Bulletin of November 1964 digest of Travis Petty testimony in *El Paso et. al.* (Gulf Pacific) hearings, October 7-9, 1964. (Mr. Travis Petty is Controller of El Paso Natural Gas Company). Mr. Petty's testimony, referred to by PG&E policy witness Moulton, takes the $50,442,-000 and $77,810,000 capital costs of the El Paso facilities — estimated by El Paso witness Barry Hunsaker — required to deliver an additional 250,000 and 325,000 Mcf per day of firm natural gas to the California border and translates that capital cost into El Paso's incremental costs of about 20.2¢ - 22.53¢ per Mcf for gas delivered to either PG&E or the Pacific Lighting Companies at the same point on the California border (A copy of the excerpt of the INGAA (Independent Natural Gas Association of America) Bulletin No. 974 (November 19, 1964) referred to by PG&E policy witness Moulton, and the underlying exhibits of Travis Petty, El Paso's Controller, showing the derivation of the 20.2¢ per Mcf incremental delivered prices are attached as Appendices "A", "B", "C" and "D" to this Reply Brief).

project is $24,974,000 (or $125 per Mcf of daily capacity added), compared to $50,442,000 (or $200 Mcf per day of daily capacity added) for El Paso's 250,000 Mcf per day alternate deliveries (Pacific Lighting Brief, pp. 16-17). However, this difference in capital costs is more than offset by the higher field cost of PG &E's Canadian gas, and the higher rate of return (7½% vs. 6⅝%) earned on PG&E's Canadian facilities — so that the delivered cost of El Paso's gas at the California border is less on both an average and incremental cost basis.[1]

Only the FPC discusses the possible application of these 20½¢-22½¢ per Mcf incremental delivered costs of an additional 250,000 Mcf per day of El Paso gas (FPC Brief, p. 17), suggesting that the benefits of this low cost El Paso incremental expansion would have to be shared with the Pacific Lighting Companies — instead of redounding solely to PG&E's benefit. The answer to this, as the FPC finally concedes in a footnote (FPC Brief, p. 17, fn. 20) is that "concededly, if a new purchase does precipitate overall lower costs it is reasonable to assume that all the reduced costs to *that* purchaser should be attributed to the new purchase". The FPC then argues that there is "absolutely no basis" for treating a seller's incremental cost as reflecting the purchaser's incremental cost when the cost savings are distributed among a number of purchasers.

In addition, a good deal of argument is made by the FPC, PG&E, and Pacific Lighting saying that the "other alternatives" are "totally misconceived" (FPC Brief, pp. 19-20), or that deliver-

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1 Pacific Lighting also alleges (without reference to any record data) that it is "clear" that the cost of bringing El Paso gas from Topock on the Arizona border to the San Francisco Bay area load center exceeded the "minimal" cost for transporting the same amount of gas from Canadian sources at the Oregon border to the same load center. Suffice it to say that on December 23, 1966 PG&E Board Chairman Gerdes announced that PG&E's compressor station at Hinkley in the Mojave Desert and at Kettleman in Kings County — on the Topock, Arizona to Milpitas (San Francisco) line — were scheduled for enlargement in 1967 in order to transport "still another" 100,000 Mcf per day from El Paso's sources of supply from fields in west Texas and New Mexico to PG&E's load center in the San Francisco Bay area.

ies of "firm" and "best effort" gas are persistently confuse(d)" (PG&E Brief, pp. 17-20), or that El Paso's available capacity is "interuptible" while PG&E consumers require "firm" capacity (Pacific Lighting Brief, pp. 18-19). Needless to say that no investigation of these issues was possible since the Presiding Examiner, and the FPC itself, refused to issue the necessary subpoenas to compel the attendance of El Paso witnesses by which any such conflicting claims could be made a matter of record, and tested by cross-examination, or rebuttal.

But all of this is a matter of argument based on matters which should have, but were not, made a matter of record before the Presiding Examiner and the FPC itself to be tested on cross-examination, made the subject of possible rebuttal testimony, and then considered by the FPC itself in making its final determination. This course of action, however, was precluded by PG&E's vigorous argument to exclude any such evidence, testimony and exhibits, affirmed by the Presiding Examiner's ruling, and the FPC's final action affirming the exclusion of the evidence which would have shown the existence and availability of these alternate means of supply.

The California gas producers, here, do not ask that the welter of conflecting claims as to the availability of alternative means of delivering equivalent supplies of natural gas from west Texas and New Mexico under similar conditions at lower prices be examined and determined by this Court. It is sufficient to show that the evidence exists, that it was sought, over objections, to be made a matter of record by the State of Texas, TIPRO, IPAA, and the California gas producers, and that the proposed evidence was excluded first by the FPC's Presiding Examiner, and then by the FPC itself. On this basis the certificate erroneously issued by the FPC should be set aside and the case remanded to the FPC with directions that the evidence as to possible alternative means sought to be presented by the State of Texas, TIPRO, IPAA, and

the California gas producers should be received and considered by the FPC before arriving at its final decision in the proceedings.

C) In Every Instance the Court Decisions Cited by the Parties Require the Presentation, and Consideration, by the FPC of Evidence Indicating the Existence of Alternative Means of Providing the Required Supplies of Natural Gas Before the Issuance of a Certificate.

In answering the questions posed by the State of Texas, TIPRO, IPAA and the California gas producers concerning the necessity of investigating the possible alternative means of providing the gas supplies to PG&E from domestic rather than Canadian sources, only two parties, PG&E and the City and County of San Francisco, even refer to the *City of Pittsburgh* and *Consolidated Edison* (*Scenic Hudson Preservation Conference*) cases cited as requiring the production, investigation, and analysis of such evidence. At that, only PG&E makes a serious attempt at analyzing the cases to determine the applicability to the present situation. As far as the FPC, Pacific Lighting, or the Oregon Public Utilities Commissioner are concerned, it is as though the cases did not exist.

Certainly, ignoring the landmark cases, cited by the State of Texas, TIPRO, IPAA, and the California gas producers does not make them inapplicable.

The City and County of San Francisco admits that the *City of Pittsburgh* case does indicate that "all alternative means (to supply gas" should be considered. However, San Francisco argues that "here", "no alternates have been shown", nor San Francisco adds would the inclusion of the profered testimony add anything "of a material nature" (San Francisco Brief, p. 11). The short reply to this is that the only reason "no alternates have been shown" is that the State of Texas, TIPRO, IPAA, and the California gas producers were prevented from making such a showing by the action of the Presiding Examiner and the FPC itself in this case — an action which San Francisco supported on the record in the FPC proceedings. Contrary to San Francisco's statements,

it may fairly be said that inclusion of the proffered testimony would have added something of a "material nature" — showing clearly that for comparable volumes of gas delivered under similar circumstances the cost of delivering alternative supplies of El Paso gas from west Texas and New Mexico to the California border would be lower than the costs of making such deliveries of additional gas to the California border from Canadian sources as proposed by PG&E.

Again, PG&E makes the argument, after referring to the *City of Pittsburgh* and *Consolidated Edison* cases, that "these cases do not apply to the circumstances of this case", since there was "no demonstration" that alternative methods exist for providing the needed volumes of additional gas at rates and under conditions more advantageous than proposed by PG&E. PG&E, too, forgets that the only reason that such a showing was not made on the record (although it was made the subject of an offer of proof) was that based on PG&E's strenuous objections, both the Presiding Examiner and the FPC itself excluded this evidence from the record, and refused to consider it in any way in reaching the FPC's final decision to certificate and approve PG&E's proposed additional new imports of Canadian gas.

The State of Texas, TIPRO, IPAA, and the California gas producers ask such an opportunity now. They are entitled to just such an opportunity under the Natural Gas Act if the "public interest" is to be served.[1]

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[1] PG&E also suggests that under the doctrine of the *City of Pittsburgh* case it would only be appropriate for the case to be remanded to the FPC where during the pendancy of the appeal the pipeline company involved (in that case Texas Eastern, and in this case El Paso) filed an application with the FPC for authority to expand its capacity. Exactly that has been done in this case. On January 31, 1967 El Paso filed a certificate application with the FPC to increase its deliveries of natural gas to PG&E by 100,000 Mcf per day on a firm basis (Docket No. CP67-217). Thus, the precise conditions which PG&E would have used as a stumbling block have, in fact, been complied with. El Paso has accordingly abandoned its "neutral" position (enforced upon it by PG&E) during the course of the FPC proceedings, and is now "ready, willing, and able" to make the required alternative deliveries if certificated (32 FR 2913-4).

III IN CONTRAST TO THE POSITION TAKEN HERE, THE FPC STAFF, THE CALIFORNIA PUBLIC UTILITIES COMMISSION, AND THE STATE OF OREGON, ALL SUPPORTED A VIGOROUS INVESTIGATION OF POSSIBLE "ALTERNATIVES" IN THE RECENT WESTCOAST TRANSMISSION CANADIAN IMPORTATION CASE

In this case, first the Presiding Examiner, then later the FPC itself excluded any evidence, sought to be produced and introduced as a matter of record, covering the possible "alternative means" of delivering an equivalent of lower cost supplies of domestically produced New Mexico gas from west Texas and to PG&E's northern California market by El Paso Natural Gas Company. The Presiding Examiner's ruling in this regard was supported by the State of Oregon (Public Utility Commissioner) and the California Public Utilities Commission. While the FPC Staff did not oppose the introduction of this "alternative means" evidence FPC Staff counsel showed no interest in investigating the "public interest" in investigating the possibilities of certificating any different lower cost domestic natural gas supplies.

This attitude of indifference on the one hand (by FPC Staff and Staff Counsel), and positive opposition on the other (by the Oregon Public Utility Commissioner and the California Public Utilities Commission), may be contrasted with the attitude of these self-same parties a year later, September 1966, when the same issue of importing an equally large volume of Canadian natural gas supplies this time into the Pacific Northwest area, but at the same price as proposed by PG&E here was presented to the FPC for determination. (*Re El Paso Natural Gas Company,* Docket Nos. G-8932, CP66-315).

In contrast to its position of shutting off any consideration of alternative means in the proceedings here, on November 28, 1966 in the Westcoast Transmission proceedings, FPC Staff counsel filed a 65 page Brief taking the position that to permit the proposed

El Paso - Westcoast Transmission purchase at the "discriminatory" rates proposed would be "unconscionable". Thus the FPC Staff recommended denial of the El Paso - Westcoast Transmission project "without prejudice" to El Paso amending its application to "reflect" a new contract containing lower firm long-term rates from Westcoast Transmission or, in the alternative, to propose a new "looping" program to bring natural gas to Pacific Northwest market from southwestern (San Juan Basin) or Rocky Mountain sources.

According to the FPC Staff the "basic question" presented to the FPC for decision in the *Westcoast Transmission* case is:

> Is it in the public interest, at this time, to permit the importation of substantial additional quantities of gas from Westcoast under a long-term contract which incorporates a high and increasing cost, not subject to any control by the Commission, or should the Commission require that El Paso consider other means to meet the long-term needs of its Pacific Northwest customers, which other means may have a short-term detrimental effect but overall long-term benefits?"

How different this is from the position of FPC Counsel to the Court here where every possible argument is being suggested in order to relieve the FPC from even considering the very question which FPC Staff Counsel considered "basic" to the Westcoast Transmission Canadian import proceeding involving the same issues.

The position of the Oregon Public Utility Commission is also in sharp contrast. Throughout the proceedings in this case before the FPC, the Oregon Public Utility Commission supported the exclusion of the evidence sought to be introduced by the State of Texas, TIPRO, and the California gas producers as to possible "alternative means" of supplying the PG&E markets from lower cost domestic sources. Oregon's intervention in the Court proceedings also supports the FPC action in certificating PG&E's

new Canadian imports without making any "alternative means" inquiry.

How different this is from the position which the Oregon Public Utility Commissioner took only three months ago in the *Westcoast Transmission* proceeding when the question of supplying Oregon's own markets with Canadian gas supplies (at the same delivered "border price") was concerned. There, in a 12-page Brief filed on November 28, 1966 by the same parties intervening in these Court proceedings (Robert Y. Thornton, Attorney General; Richard W. Sabin, John H. Socolofsky, Assistant Attorneys General, Salem, Oregon) the Oregon Commission states that the "primary issues" in this matter so far as Oregon is concerned are:

"1. Are the terms of the present contract, the best terms available under which needed volumes can be supplied?

"2. What will the effect of the contract upon the Pacific Northwest be in the long run?

"3. Are there more reasonable alternatives?"

Only after detailed examination of these "reasonable alternatives" does Oregon feel "compelled" to recommend approval of El Paso's Westcoast Transmission Canadian import request — a sharp contrast with Oregon's position in these proceedings where it recommended and supported shutting off any consideration of such "reasonable alternatives" testimony.

The self-same situation applies to the California Public Utilities Commission.

Throughout the proceedings before the FPC in the present PG&E Canadian import proceedings now on appeal before this Court, the California Public Utilities Commission supported the exclusion of all evidence sought to be presented by the State of Texas, TIPRO, and the California gas producers as to the availability of alternative supplies of natural gas from domestic sources

in west Texas and New Mexico, which could be delivered by El Paso Natural Gas Company to the California border at a lower price than the additional Canadian imports for which the FPC has given PG&E approval here. The situation, however, is sharply different when the same counsel for the California Public Utilities Commission (Mary Moran Pajalich, Chief Counsel; J. Calvin Simpson, Principal Counsel, and Sheldon Rosenthal, Senior Counsel) appear in the *El Paso - Westcoast Transmission* Canadian import proceedings.

In the *El Paso - Westcoast Transmission* FPC proceedings less than three months ago, the California Commission says it "believes that there are alternate sources of supply capable of satisfying this need which will better meet the public convenience and necessity of El Paso's Northwest and Southern Division customers."

The California Commission says that during the course of the *Westcoast Transmission* proceeding, it became apparent that two other sources for obtaining the required 200,000 Mcf per day of additional supplies of gas were available to El Paso's Northwest Division: El Paso's Ignacio plant in the San Juan Basin; and, the abandonment of El Paso's present sale to Colorado Interstate in the Rocky Mountain area. Because of the additional facilities required for deliveries of gas from these alternative sources, the incremental cost of these additional supplies of domestic gas to the El Paso's Northwest Division appear to be at "least equal to" and "possibly slightly greater" than the cost of any "quantity under El Paso's proposal" before the FPC.

> "Although comparative economics must play a major role in the determination of public convenience and necessity, the first-year costs of various alternatives are not the sole criteria. The Federal Power Commission (Commission) must consider the future effect of a proposal on such matters as *additional sources of supply* and the price therof beyond the

existing application, system-wide flexibility of the purchasing pipeline to meet demands in all its service area, and stimulation of producer exploration and development of new gas resources." (Emphasis supplied).

Under these circumstances, the California Commission urged the FPC to deny El Paso's application in the Westcoast Transmission proceeding and "encourage" El Paso to file a new application which would contemplate expansion into the existing Northwest Division facilities to permit transportation of gas from the San Juan Basin and the Rocky Mountain area to the Pacific Northwest load centers.

Perhaps it is the California Commission's embarrassment at its completely inconsistent position in the two parallel Canadian import proceedings before the FPC which prevents it from supporting its position on appeal from the FPC proceedings here.

In this regard, the inconsistency of the FPC's own position in the Westcoast Transmission Canadian import proceedings, and its position before the Court here are equally apparent. Instead of arguing in support of the exclusion of such "alternative means" testimony, as the FPC does here, in the *El Paso - Westcoast Transmission* Canadian import proceeding, the FPC specifically stated in advance of opening the hearings that the issues to be covered included (*Re El Paso Natural Gas Company*, Docket No's. G-8932, CP66-315, order issued June 24, 1966):

"(1) Are there alternative means available to meet the needs of the Northwest customers which would be more preferable than the proposal herein?

"(2) Is there a market at this time for the volumes of gas proposed to be sold and transported by El Paso?

"(3) Is it in the public interest to permit El Paso to import the additional volumes of natural gas at the price proposed to be charged by Westcoast Transmission Company?

"(4) What will be the rate effect of the proposal herein?

"(5) Should a domestic pipeline rely upon Canadian reserves to the degree that is herein proposed or should restrictions be placed upon the importation of natural gas, in light of the facts in this case?"

How different this expressed point-of-view is from the FPC position in these parallel proceedings where FPC Counsel argues in support of the exclusion of evidence which would have provided and exposition of these self-same issues!

Certainly any position taken by the parties to the proceedings on appeal to the Court here must be considered in the light of their completely inconsistent positions, (in support of the position taken by the State of Texas, TIPRO, and the California gas producers) taken in the even more recent *El Paso - Wescoast Transmission* Canadian import proceedings.

IV THE IMPACT ON PG&E OF THE TEMPORARY LOSS OF THE PRESENTLY CERTIFICATED ADDITIONAL CANADIAN GAS SUPPLIES WOULD BE MINIMAL, AND WOULD EASILY BE OFFSET BY ADDITIONAL PURCHASES OF CALIFORNIA PRODUCED GAS OR GAS FROM WEST TEXAS AND NEW MEXICO SOURCES.

In its Answering Brief in these proceedings PG&E indicates that one of the reasons why the Federal Power Commission's decision approving PG&E's additional purchases of Canadian gas should be upheld is the impact on PG&E's northern California gas distribution system in the event that these supplies of Canadian gas were temporarily or permanently lost.

The fact of the matter is that the loss of these additional FPC - approved purchases of Canadian gas would not have *any effect at all on* PG&E's deliveries of natural gas on cold winter design peak days until the winter of 1968 - 69 at the earliest. As far as day-in and day-out average annual purchases are concerned,

PG&E's additional Canadian gas purchases amount to less than 5% - 10% of PG&E's total annual gas supply from all sources, and any loss can readily be made up by additional purchases of California produced gas, or additional deliveries by El Paso Natural Gas Company of gas from west Texas and New Mexico sources.

In addition, it is clear that, if, on the average PG&E's natural gas deliveries in northern California were to be curtailed by 5% - 10%, *no natural gas consumer of PG&E's in northern California would be remotely affected.* The only impact would be that PG&E's low-priority steam-electric generating plants (which presently consume over 30% of PG&E total gas supply) would have to burn residual fuel oil, which is in plentiful supply. Not only are there no restrictions on the burning of this substitute fuel, but large supplies are readily available at the present equivalent price of PG&E's present gas supplies. Furthermore, all of PG&E's steam-electric generating plants, including those at Pittsburg and Antioch on the Sacramento River, are equipped to switch to burning residual fuel oil at the turn of a switch (Frank, R. 1185; Moulton, R. 1626).

A) PG&E Does Not Need the Additional Supplies of Canadian Gas In Order to Meet PG&E's PEAK-DAY Requirements Before the Winter of 1968 - 69.

Based on PG&E's own data of record, PG&E does not need the additional supplies of Canadian gas in order to meet PG&E's cold *peak day* requirements before the Winter of 1968 - 69.

Thus, PG&E's market requirement witness Frank stated that without the applied for Canadian gas, supply deficiencies begin only in the winter season of 1968-69, two years after the present *date PG&E proposes receiving initial deliveries under its applications to the Commission* (R. 1114). While Mr. Frank's direct testimony (served on the parties May 24, 1965) originally claimed that the additional supplies of Canadian gas were required to

remedy peak day supply deficiencies in the winter of 1967-68, this was amended prior to presentation (September 23, 1965) to withdraw the original claim, and require the additional supplies for such peak day purpose requirements a year later, for the winter of 1968-69 (Frank, R. 1107).

Even on PG&E's unsupported forecast of a sharply declining peak day supply of California gas, PG&E has an excess of available peak day supply over peak day requirements through the winter of 1967-68 without the importation of the additional proposed 200,000 Mcf per day sought to be imported from Canada (Ex. No. 18, page 10, last column, R. 2403; R. 1116; Ex. No. 17, page 8, line 12; R. 2391):

PEAK DAY SUPPLY AND REQUIREMENTS (Mcf per Day)

Forecast	Excess With Proposed Canadian Supplies	Canadian Supplies	Excess Without Proposed Canadian Supplies
1965-66	294,000	211,000	83,000
1966-67	367,000	211,000	156,000
1967-68	253,000	211,000	42,000

In making this comparison, not only is additional "operating tolerance" of 70-72,000 Mcf per day included, but 56-69,000 Mcf per day of interruptible load "not promptly curtailable" is also included. (Ex. No. 18, p. 10, R. 2403).

If instead of PG&E's artificially reduced indicated peak day availability of 1,321,000 Mcf per day for northern California gas, the present peak day supply level of 1,562,400 Mcf of gas actually physically available were used, an additional "margin" of over 250,000 Mcf per day of peak day California gas would be available (Haavik, Ex. No. 17, p. 8, line 3; R. 2391).

Based on the testimony of PG&E's own market witness, and the supporting data submitted by PG&E itself, therefore, no justification exists for PG&E to import the additional proposed supplies of Canadian gas to meet *peak day* requirements before the winter of 1968 - 69, *at least two years beyond the November 1, 1966 initial delivery date proposed here by PG&E.*

B) PG&E's Additional Volumes of Canadian Gas Certificated by the FPC Amount to Only 5% - 10% of PG&E's Total Gas Supply.

In order to put the FPC's certification of PG&E's additional Canadian gas supply into perspective, it is necessary to compare the additional Canadian gas supply applied for by PG&E, and approved by the FPC, with PG&E's total average annual gas supply available from all sources.

On this basis the average annual additional Canadian gas supply to PG&E amounts to about 5% (5.4%) for the first year (1967) and less than 10% (9.3%) in total in the second year (1968).

ANNUAL GAS REQUIREMENTS

1967	Annual (Bcf)	Average (Mcf per day)	% of Total
California Gas	191.836	528,000	25.1%
El Paso gas	375.278	1,027,000	49.1%
Canadian gas			
Present (1965)	152.132	418,000	19.9%
Applied For	41.613	114,000	5.4%
Total Canadian	193.745	532,000	25.3%
Total All Gas	764.931*	2,087,000*	100.0%*
1968			
California gas	165.520	453,000	21.6%
El Paso gas	375.577	1,029,000	48.7%
Canadian gas			
Present (1965)	152.132	418,000	19.9%
Applied For	72.116	197,000	9.3%
Total Canadian	224.248	615,000	28.2%
Total All Gas	769.323*	2,197,000*	100.0%*

* Note: Totals also include minor underground storage withdrawals (about ½%).

Source: Frank, Ex. No. 18, p. 2 (R. 2395)

C) PG&E Has Readily Available More Than Enough Additional Supplies of California Produced Gas, and Gas From El Paso Sources, to Make Up the Loss of the Additional Canadian Gas Certificated by the FPC.

The fact of the matter is that PG&E has readily available more than enough additional supplies of California produced gas, and gas from El Paso sources, to make up for the loss of 100,000 Mcf per day in 1967 and 200,000 Mcf per day in 1968 of additional Canadian gas erroneously certificated by the FPC.

a) Additional Northern California Gas Supplies.

Compared to PG&E's estimates, it is clear that additional supplies of northern California dry gas will, in fact be available. These additional northern California dry gas supplies at the present level of northern California gas deliveries amount to approximately the 100,000 - 200,000 Mcf per day of additional Canadian gas imports certificated erroneously by the FPC.

Thus, if northern California dry gas deliveries are merely maintained at their present 1963-64 delivery level (instead of being sharply cut, as proposed by PG&E), the additional gas supplies required by PG&E will be available:

CALIFORNIA PRODUCED GAS
(Average Daily Amount)

Average (Mcf) per Day	PG&E Estimated Supply	Additional Available Supply
Actual:		
1963	632,000	—
1964	628,000	4,000
Estimated:		
1965	608,200	23,800
1966	604,200	27,800
1967	525,600	106,400
1968	453,500	178,500

It is only PG&E's blind refusal to admit the existence of these additional northern California gas supplies, which have

actually resulted from new discoveries and developments in northern California since December 31, 1965 that prevents these additional available supplies — at PG&E's own "back door" — from being taken into account. Once *any* account is taken of even the possibility of any such new northern California gas discoveries, developments and supplies, it is evident that PG&E has the additional California gas supplies which it requires "for the mere asking." These additional California gas supplies, at the present level of northern California dry gas production, are sufficient, for all practical purposes, to meet the deficiency in PG&E's stated overall gas requirements.

b) Additional El Paso Gas Supplies.

In addition to additional supplies of northern California dry gas, PG&E also has available additional supplies of gas from El Paso from west Texas and New Mexico sources. Again, this additional supply is enough to meet at least half, if not more, of any PG&E loss of 100,000-200,000 Mcf per day of certificated Canadian gas supplies.

In PG&E's gas supply estimates presented to the FPC, PG&E included 1,025,000 Mcf per day from El Paso, PG&E's presently certificated firm daily quantity. As stated in the California gas producers Initial Brief (pp. 25-26) this is considerably less than the actual maximum level of deliveries of El Paso's gas to PG&E over existing El Paso, and PG&E facilities.

In order to make certain that these additional supplies of El Paso gas will in fact be available to PG&E during the coming year, PG&E within the last few months has entered into a new contract with El Paso to receive an additional quantity of 36,500,000 Mcf of natural gas. On a 365 day year, this is exactly equal to on the average 100,000 Mcf per day — or precisely half of the additional gas supply which PG&E would otherwise purchase from Canada. The cost of this additional El Paso gas to PG&E

at the California border is about 21½¢ per Mcf, or up to 3¢ per Mcf *less expensive* than even incremental supplies of Canadian gas delivered by PG&E's affiliate pipeline, also at the California border. (Rate Schedule No. G-X-2; Item D; R. 3098)

This Court can take official, or judicial, notice of the availability of these additional El Paso supplies, and particularly the statement in the FPC's official order, of December 13, 1966, that El Paso will make these additional deliveries "through maximum utilization of its presently certificated pipeline facilities at the existing point of interconnection" between El Paso and PG&E at the California border, and that "no additional pipeline facilities are proposed or required to be constructed" by El Paso in order for El Paso to make the additional natural gas deliveries to PG&E (*Re El Paso Natural Gas Company,* Docket No. CP67-51, order issued December 13, 1966).[1]

Summary

In sum, it is clear that PG&E has readily available more than enough additional supplies of California produced gas, and gas from El Paso sources to make up for the loss of 100,000 Mcf per day in 1967 and 200,000 Mcf per day in 1968 of additional Canadian gas erroneously certificated by the FPC, and these supplies are presently available to PG&E without further regulatory action of any kind.

D) No Consumer of Natural Gas in California Would Be Even Remotely Affected By Any 5% - 10% Curtailment in PG&E's Supplies of Natural Gas.

Even if PG&E were to lose 100,000 Mcf per day of gas in 1967, and 200,000 Mcf of gas in 1968, from Canadian sources, and this gas could not be made up with alternate supplies of gas

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[1] On December 22, 1966 PG&E's Chairman of the Board stated in a press-release that PG&E was enlarging its compressor stations at Hinkley in the Mojave Desert, and at Kettleman in Kings County in order to make this additional 100,000 Mcf per day of gas available from El Paso.

from other sources, *no consumer of natural gas in California would even be remotely affected* by such a 5%-10% curtailment in PG&E overall supplies.

The only effect would be that PG&E's low priority steam-electric generating stations would have to turn to the burning of residual fuel oil instead of natural gas. Not only is this residual fuel oil in plentiful supply, but there are no restrictions on its burning at these locations, and large supplies are readily available at the present equivalent price of PG&E's present gas supplies. Furthermore all of PG&E's steam-electric generating plants, including those at Pittsburgh and Antioch on the Sacramento River, are equiped to burn residual fuel oil, instead of natural gas, at the turn of a switch.

a) PG&E's Estimated Firm Natural Gas Requirements

At the outset, it may be noted that — because of the loss of a large resale customer (the Pacific Lighting Companies in southern California) PG&E's firm requirments for natural gas are in fact actually less in 1968 than they are in 1966:

ESTIMATED FIRM NATURAL GAS REQUIREMENTS

	Annual (Bcf)	Average (Mcf per Day)
1966	347.045	951,000
1967	331.314	908,000
1968	345.669	947,000

Source: Frank, No. 18, p. 2 (R. 2395)

More important, however, is recognition that out of PG&E's total natural gas requirements, less than 40% (or only 908,000 Mcf per day out of a total of 2,294,000 Mcf per day) is required for deliveries to the over 2,000,000 firm residential, commercial, and industrial customers throughout PG&E's northern California service area.

b) PG&E's Estimated Interruptible Natural Gas Requirements

Next, approximately 1700 industrial users consume nearly 30% (or 666,000 Mcf per day) of PG&E's total gas supply under uniform contract conditions which provide only for "interruptible" supplies of natural gas. Each of these large interruptible industrial customers is required, by California Public Utilities Commission order, to have available alternate supplies of fuel (usually residual fuel oil, or fuel oil of lighter quality) available to burn at all times.

Last, in order of priority (and first to be curtailed) are P-G&E's deliveries to its own steam-electric generating plants, including the large plants at Moss Landing and Antioch on the Sacramento River (Frank, R. 1198). In 1967 these deliveries are estimated to amount to over 720,000 Mcf per day, and constitute over 31.5% of PG&E total gas requirments.

SUMMARY OF PG&E NATURAL GAS REQUIREMENTS

1967	No. of Customers	Annual (Bcf)	Average (Mcf per day)	% of Total
Firm Requirements	2,076,984	331.314	908,000	39.5%
Interruptible:				
Industrial	1,690	242.892	665,000	29.0%
PG&E Plants	—	263.184	721,000	31.5%
Total	2,078,674	837.390	2,294,000	100.0%

Source: Frank, Ex. No. 18, pp. 2, 3 (R. 2395-6)

In view of the fact that a loss of 100,000-200,000 Mcf per day in PG&E's Canadian supplies amounts to only 14%-28% of PG &E's own consumption of low priority natural gas in PG&E's own steam-electric generating plants, it is clear that even with such a loss, no other supplies would be affected. This is particularly true since PG&E's own witness stated that the additional supplies of Canadian gas were not needed to meet peak-day delivery requirements until the winter of 1968-69 (Frank, R. 1114).

Accordingly, if PG&E were to lose the additional 100,000-200,000 Mcf per day of Canadian gas which it has applied for in the FPC proceedings, *no individual PG&E customer would be remotely affected.* The only effect might be that PG&E would have to burn residual fuel oil rather than natural gas in its own steam-electric generating plants (particularly the Pittsburgh and Antioch plants on the Sacramento River).

Since there are no restrictions on such burning, and since alternate supplies of residual fuel oil are in oversupply and are in fact readily available (Jordan, R. 1580) and since PG&E's steam-electric generating plants are all equiped to use residual fuel oil (Frank, R. 1185; Moulton, R. 1626) the *only* impact of the loss of the additional supplies of Canadian gas — even if no alternative supplies of natural gas from domestic sources were available — would be to require PG&E to consume some of the area's supply of residual fuel oil.

Summary

While PG&E speaks of the impact on PG&E's northern California gas distribution system in the event that its additional supplies of Canadian gas were tempororily or permanently lost the fact of the matter is that the loss of these additional FPC-approved purchases of Canadian gas would not have *any effect at all* on PG&E's deliveries of natural gas on cold winter design peak days until the winter of 1968-69 at the earliest. These additional Canadian gas purchases amount to less than 5%-10% of PG&E's total annual average gas supply from all sources, and any loss can readily be made up by additional purchases of California produced gas, or additional deliveries by El Paso Natural Gas Company of gas from West Texas and New Mexico sources.

Even if on the average PG&E's natural gas deliveries to northern California were to be curtailed by 5%-10%, *no natural gas consumer of PG&E's in northern California would be remotely*

affected. The only impact would be that PG&E's low-priority steam-electric generating plants (which presently consume over 30% of PG&E total gas supply) would have to burn residual fuel oil, which is in plentiful supply. Not only are there no restrictions on the burning of this substitute fuel, but large supplies are readily available and all of PG&E's steam-electric generating plants, including those at Pittsburgh and Antioch on the Sacramento River, are equipped to switch to burning residual fuel oil at the turn of a switch.

In sum, there is no factual basis upon which PG&E can be shown to suffer in the event that this Court were to set aside the certificate erroneously granted by the FPC and require both PG&E and FPC to re-examine the necessity, and the basis, for PG&E's present additional purchases of Canadian gas.

V THE ISSUES PRESENTED IN THIS PROCEEDING ARE NOT ONLY IMPORTANT FOR DISPOSITION HERE, BUT ALSO AS A GUIDE TO NEW APPLICATIONS TO THE FPC FOR CERTIFICATION OF ADDITIONAL LARGE CANADIAN GAS IMPORTS

Whatever the disposition of the case now presented to this Court for determination here, it is certain that the Court's determination will play an important part in determining what examination must be made, and what support must be found, by the FPC before it certificates any additional imports of natural gas from Canada. If this Court says that no investigation is required of any alternative means of delivering equivalent volumes of lower cost domestic supplies of natural gas from United States sources to the markets in question, it may be taken for certain that future Canadian import approvals will be issued by the FPC in a perfunctory manner with minimum record support and without a full investigation of the "public interest".

Thus, as in this instance, the FPC will be free to issue its certificate and import approval without taking into account:

a) Any possible future discoveries or developments of natural gas supply in the marketing area sought to be served; or

b) The availability of an equivalent volume of domestically produced gas at a lower delivered cost.

Needless to say, Court approval of any such course of future FPC action would be a continuing detriment to a vigorous consideration of the the public interest.

At the present time, in addition to the present proceedings, there are now before the FPC at least three important cases in which the question of certificating and approving additional imports from Canadian sources is presented for decision. These are:

> Westcoast Transmission proceedings — wherein El Paso Natural Gas Company seeks permission to import 200,000 Mcf per day of natural gas from British Columbia at approximately 27¢ per Mcf (equivalent to about $20 million a year) (Docket No's. G-8932, CP66-315).

This case is now submitted for decision to an FPC Presiding Examiner with the filing of briefs in December 1966.

> Great Lakes Transmission proceedings — wherein Great Lakes Transmission seeks, among other things, to import 170,000 Mcf per day of natural gas from Alberta and Sasketchewan at approximately 27¢ per Mcf (equivalent to about $17 million a year) (Docket No's. 66-10, et al.)

This case has now been reopened for further hearings before an FPC Presiding Examiner.

> Pacific Gas Transmission proceedings — wherein PG&E's subsidiary seeks to import an *additional*

> 200,000 Mcf per day of natural gas from Alberta at approximately 29¢ per Mcf (equivalent to about $21 million a year) (Docket No's. CP67-187, 188).

This case was filed with the FPC in December 1966 and hearings are expected to be held sometime this summer.

While in the first two of these, the Westcoast Transmission and Great Lakes Transmission proceedings there was a vigorous investigation and presentation of the available domestic supplies of natural gas and the possible "alternative means" of delivering these supplies to the U. S. markets involved, this was, and is, not the situation in the present, or the newly applied for applications filed by Pacific Gas Transmission to import additional supplies of Canadian gas for delivery into northern California.

In this latter case, unless compelled to do so by this Court, or by a "change of heart" on the part of the FPC, neither PG&E, nor its Pacific Gas Transmission subsidiary intends, to present in this forthcoming proceeding any testimony or evidence showing either: (1) The availability of any possible future discoveries of natural gas supply in the northern California marketing area which PG&E seeks to serve, or (2) The availability of an equivalent volume of domestically produced gas at a lower delivered cost.

Contrary to its position in other Canadian import proceedings the FPC here argues against a full investigation of the factors by which the "public interest" of the United States and of California can be measured. Unless *this* Court takes appropriate action in *these* proceedings to order that such an investigation be made, it will apparently never occur — at least insofar as Canadian natural gas imports into northern California are concerned.

SUMMARY AND CONCLUSION

In sum, the arguments presented by both the FPC, and PG&E here in opposition to the State of Texas, TIPRO, and the California gas producers amount only to a policy position that no investigation should be officially made and presented as a matter of record in these — or any other future — Canadian import proceedings.

If this point-of-view, espoused by the FPC and PG&E, is to prevail, it will mean that in all future Canadian import proceedings for deliveries of vast new quantities of Canadian gas into northern California, no account need be taken of either the availability of any possible future discoveries of natural gas supply in northern California, or the availability of an equivalent volume of domestically produced natural gas at a lower delivered cost. Such a policy would, of course, be disastrous to the long-term future of domestic natural gas production and supplies, as IPAA has pointed out.

It is with this in mind that the California gas producers ask that the FPC's decision in these proceedings be set aside, and new hearings ordered in the light of:

1) The FPC's failure to consider Pacific Gas and Electric Company's (PG&E's) estimated "cut-backs" of California produced gas in order to provide a market for the proposed importation of Canadian gas.

2) The FPC's failure to adequately consider the availability of alternative supplies of natural gas from El Paso and perhaps Transwestern.

Respectfully submitted,

HENRY F. LIPPITT, 2ND.,

Attorney for
California Gas Producers Association
Independent Oil and Gas Producers
of California
Jade Oil and Gas Company

February 20, 1967

626 Wilshire Boulevard
Los Angeles, California 90017

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

HENRY F. LIPPITT, 2ND.
Attorney

Appendix "A"

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

IN REPLY REFER TO:

BNG-PL/SW
Pacific Gas Transmission Company
Docket No. CP67-187

Pacific Gas Transmission Company
245 Market Street
San Francisco, California 94106

JAN 18 1967

Gentlemen:

Your application in the subject docket to expand your pipeline system and to import additional gas from Canada should be supplemented by the submittal of the following information:

(1) List of all alternate sources, together with studies and explanations associated therewith, which you have considered before deciding to import additional gas from Canada.

(2) Breakdown of the increase in proven gas reserves between November 1, 1964 and November 1, 1966 by type of contract. This should be shown for each category as in Exhibit H (2), Page 1.

(3) Explanation as to the source of peaking gas shown in the graph on Exhibit I (2) (b), Page 6.

(4) Workpapers in support of Exhibit I.

The requested information should be submitted within 30 days from the date of this letter; otherwise, the application would be subject to rejection under the provisions of Section 157.8 of the Regulations under the Natural Gas Act.

Very truly yours,

Secretary

APPENDIX "B"

Excerpt from Bulletin of Independent Natural Gas Association of America (Bulletin No. 974, November 19, 1964, Summary of FPC Hearing, Transwestern Pipeline Company, et. al., Docket No. CP63-204, et. al., covering sessions of October 7 through 9: long-term southern California gas needs).

There was next called Travis Petty, assistant controller of El Paso, whose original direct had involved system-wide and incremental costs and revenue estimates relating to the alternative proposals of El Paso. He also submitted a pro forma service agreement between his company and the Southern California Companies reflecting the proposed deliveries of an additional 250,000 Mcf/d.

Estimated system-wide net income from the 250,000 Mcf/d project was calculated to yield return on net gas plant investment of from 5.97% in 1964 to 6.73% in 1970, under the Petty calculations, which reflected operation and maintenance expenses based on 1962 experience, adjusted for known changes expected in subsequent years, and purchased gas costs based on prices in effect up to January 1, 1964 without reflecting future constractual escalations except those applicable in the San Juan Basin and for Canadian gas, the witness explaining he had assumed such 1¢ escalations called for in the San Juan contracts in 1964 and 1969 would be made permanently effective in view of the relatively low rates paid for gas in that area, but that contractual escalations in other areas from which El Paso purchases likely will not become permanently effective and may in fact be reduced.

He calculated that the average incremental cost attributable to delivery of the additional 250,000 Mcf/d during the 1968-70 period would be 19.77¢, including a 6-1/8% rate of return, and that the .75¢ per Mcf proposed rate reduction El Paso has agreed to if the 250,000 Mcf/d project is approved would result in a total saving of $34,000,000 to the company's customers.

His figures for the 575,000 Mcf/d project showed estimated system-wide rates of return over the 1963-70 period were about the same as for the 250,000 Mcf/d project; average incremental cost of the additional 575,000 Mcf/d, 1968-70, 21.98¢ per Mcf, including the 6-1/8% return; total savings to customers from the 1¢ rate reduction, assuming certification, $47,800,000.

Another calculation by Mr. Petty estimated average cost of transporting 865,000 Mcf/d, during the period 1968-70, from the California border to the Los Angeles area at 3.04¢ per Mcf, including the same return figure, and including El Paso's incremental cost of delivering 575,000 Mcf/d and Transwestern's incremental cost of delivery 290,000 Mcf/d both to the California border, the total incremental unit cost for delivery of the 865,000 Mcf/d to Los Angeles was estimated at an average of 25.86¢ per Mcf for the 1968-70 period, with the unit cost of delivery to Los Angeles on a rolled-in basis averaging 33.73¢ per Mcf during the same period. All his figures were on a 14.73 psia basis.

Before being cross-examined, Mr. Petty gave supplemental direct, in which he sponsored some revised exhibits which he said were to give effect to the "changed circumstances that have been described by (El Paso President) Mr. Boyd." He said the revisions updated the previously-sponsored exhibits giving effect to more current information.

As a result of these changes, he said, the estimated average cost per Mcf of the 250,000 Mcf/d project is 20.57¢ in 1968, 20.69¢ in 1969, and 20.05¢ in 1970 at load factors of 91.66%, 94.74% and 98.3%, respectively, and the average for the total volume over the three years is 20.43¢ at the average load factor of 94.9%, all figures being on a 14.9 psia basis, the last figure converting to 20.2¢ per Mcf on a 14.73 psia basis; for the 575,000 Mcf/d project, the new figures were given as cost per Mcf 22.66¢ in 1968, 23.01¢ in 1969 and 22.69¢ in 1970 @ 14.9 psia and 95% load factor, the average for the three years being 22.79¢ @ 14.9 psia, or 22.53¢ @ 14.73 psia; for the 865,000 Mcf/d project, the costs per Mcf @ 14.9 psia are estimated at 3.04¢ in 1968, 2.99¢ in 1969 and 2.93¢ in 1970, for an average of 2.99¢ @ 14.9 psia, or 2.96¢ @ 14.73 psia. He also indicated minor changes in the estimated savings to customers as a result of the contemplated rate reductions.

Appendix "C"

Docket No. CP64-76
Exhibit 125 (TP-2)
Schedule No. 6
Sheet 1 of 1
Witness: Petty

EL PASO NATURAL GAS COMPANY

Cost of Service Based Upon a 6-1/8% Rate of Return
for the Years 1968 Through 1970

Attributable Solely to the Proposed Facilities

250 M^{2}CF/D Proposal

Line No.	Description (a)	1968 (b)	1969 (c)	1970 (d)	Line No.
	Cost of Service				
1	Other Gas Supply Expense	$ 6,524,847	$ 6,973,123	$ 7,007,345	1
2	Production and Gathering Expense	4,064,587	4,187,684	4,191,082	2
3	Products Extraction Expense	1,947,718	1,959,365	1,958,633	3
4	Transmission Expense	1,542,938	1,548,232	1,548,232	4
5	Administrative and General Expense	418,493	418,455	418,455	5
6	Taxes Other than Federal Income Tax	927,244	949,816	948,832	6
7	Depreciation and Depletion	2,711,898	2,724,653	2,720,979	7
8	Federal Income Tax	1,344,704	1,231,789	1,113,362	8
9	Return at 6-1/8%	2,784,478	2,617,984	2,451,212	9
10	Revenues Credited	(4,149,060)	(4,140,175)	(4,154,864)	10
11	Total Cost of Service	$18,117,847	$18,470,926	$18,203,268	11
12	Sales in MCF at 14.9 p.s.i.a.	91,500,000	91,250,000	91,250,000	12
13	Cost per MCF	19.80¢	20.24¢	19.95¢	13
	Rate Base, Return and Federal Income Tax				
14	Average Gas Plant in Service	$50,442,000	$50,442,000	$50,442,000	14
15	Average Reserves for Depreciation and Depletion	6,166,514	8,884,790	11,607,606	15
16	Net Plant	$44,275,486	$41,557,210	$38,834,394	16
17	Working Capital	1,185,387	1,185,387	1,185,387	17
18	Rate Base	$45,460,873	$42,742,597	$40,019,781	18
19	Return at 6-1/8%	$ 2,784,478	$ 2,617,984	$ 2,451,212	19
20	Less: Tax Deductions	1,543,213	1,480,948	1,423,493	20
21	Balance of Return	$ 1,241,265	$ 1,137,036	$ 1,027,719	21
22	Federal Income Tax (108.33333%)	$ 1,344,704	$ 1,231,789	$ 1,113,362	22

Note: As testified to by El Paso witness Petty (Assistant Controller) at page 12, Question and Answer 26 of his Prepared Testimony, "as shown on line 13 the cost per Mcf is 19.80¢ in 1968, 20.24¢ in 1969, and 19.95¢ in 1970 at 14.9 psia. The average is 20.00¢

Appendix "D"

Docket No. CP64-76
Exhibit 128 (TP-5)
Schedule No. 6
Sheet 1 of 1
Witness: Petty

EL PASO NATURAL GAS COMPANY

Cost of Service Based Upon a 6-1/8% Rate of Return
for the Years 1968 Through 1970

Attributable Solely to the Proposed Facilities

575 M^2CF/D Proposal

Line No.	Description (a)	1968 (b)	1969 (c)	1970 (d)	Line No.
	Cost of Service				
1	Other Gas Supply Expense	$ 20,258,679	$ 21,214,927	$ 21,275,921	1
2	Production and Gathering Expense	6,669,190	6,649,427	6,652,624	2
3	Products Extraction Expense	2,748,343	2,753,845	2,752,483	3
4	Transmission Expense	1,440,368	1,445,658	1,445,673	4
5	Administrative and General Expense	692,677	692,607	692,615	5
6	Taxes Other than Federal Income Tax	2,137,654	2,152,920	2,150,957	6
7	Depreciation and Depletion	5,890,971	5,844,061	5,836,721	7
8	Federal Income Tax	2,776,894	2,542,687	2,324,007	8
9	Return at 6-1/8%	7,550,095	7,190,709	6,832,985	9
10	Revenues Credited	(5,837,404)	(5,822,088)	(5,846,139)	10
11	Total Cost of Service	$ 44,327,467	$ 44,664,753	$ 44,117,847	11
12	Sales in MCF at 14.9 p.s.i.a.	199,927,500	199,381,250	199,381,250	12
13	Cost per MCF	22.17¢	22.40¢	22.13¢	13
	Rate Base, Return and Federal Income Tax				
14	Average Gas Plant in Service	$134,207,000	$134,207,000	$134,207,000	14
15	Average Reserves for Depreciation and Depletion	14,053,753	19,921,268	25,761,660	15
16	Net Plant	$120,153,247	$114,285,732	$108,445,340	16
17	Working Capital	3,113,602	3,113,602	3,113,602	17
18	Rate Base	$123,266,849	$117,399,334	$111,558,942	18
19	Return at 6-1/8%	$ 7,550,095	$ 7,190,709	$ 6,832,985	19
20	Less: Tax Deductions	4,986,808	4,843,613	4,687,748	20
21	Balance of Return	$ 2,563,287	$ 2,347,096	$ 2,145,237	21
22	Federal Income Tax (108.33333%)	$ 2,776,894	$ 2,542,687	$ 2,324,007	22

Note: As testified to by El Paso witness Petty (Assistant Controller) at page 16, Question and Answer 35 of his Prepared Testimony, "as shown on line 13...the cost per Mcf is 22.17¢ in 1968, 22.40¢ in 1969, and 22.13¢ in 1970 at 14.9 psia. The average is 22.23¢ which is equivalent to 21.98¢ per Mcf at 14.73 psia.